

AMENDED IN SENATE SEPTEMBER 5, 1997

AMENDED IN ASSEMBLY MAY 14, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1555**

---

**Introduced by Committee on Health (Gallegos (Chair),  
Alquist, Brown, Davis, Escutia, Figueroa, Hertzberg,  
Mazzoni, Ortiz, Thomson, Villaraigosa, Vincent, and  
Wildman)**

March 6, 1997

---

An act to amend Sections 2076.5, 2111, 2135, 2185, 2290.5, and 2443 of, and to repeal Section 2076 of, the Business and Professions Code, relating to physicians and surgeons, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1555, as amended, Committee on Health. Physicians and surgeons.

(1) Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law provides a procedure for physicians who are not citizens but who are legally admitted to the United States and who seek postgraduate study in an approved medical school under which the physicians may participate in the professional activities of the department in the medical school to which they are appointed as guest physicians. Existing law requires a physician applying to be a guest physician to be

board eligible, board certified, or the equivalent in his or her basic discipline.

This bill would delete this requirement.

(2) Existing law provides an exemption from licensure for a physician and surgeon, lawfully practicing medicine in another state or country, for practicing medicine in this state at the invitation of the XV FIFA World Cup Organizing Committee or the United States Olympic Committee to provide medical services at designated training sites or events, subject to certain conditions.

This bill would amend this provision to delete the references to the XV FIFA World Cup Organizing Committee.

(3) Existing law authorizes the Division of Licensing of the board to issue a physician and surgeon's certificate to an applicant, based on reciprocity principles, who meets certain requirements, including that the applicant holds an unlimited license as a physician and surgeon in another state that was issued pursuant to certain procedures, and that the applicant has practiced medicine with an unrestricted license in a state or states, in Canada, or as a member of the military or other public agencies.

This bill would amend the requirement that the applicant hold an unlimited license as a physician and surgeon in another state to provide that the unlimited license may also be from a Canadian province. It would amend the provisions requiring that the applicant have practiced medicine with an unrestricted license to instead require the applicant to have held an unrestricted license to practice medicine.

(4) Existing law provides that an applicant who fails to pass the oral examination or any part of the written examination after 2 attempts shall not be eligible to be reexamined until he or she completes additional appropriate medical instruction in a program conducted under the auspices of a medical school.

This bill would also authorize the instruction to be in an approved postgraduate training program.

(5) Existing law establishes certain provisions regarding the practice of telemedicine.



This bill would prohibit construing these provisions to alter the scope of practice of any health care provided or to authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

*This bill would incorporate additional changes in Section 2290.5 of the Business and Professions Code, proposed by SB 922, to be operative only if SB 922 and this bill are both chaptered and become effective January 1, 1998, and this bill is chaptered last.*

(6) Existing law prescribes certain fees for the issuance of fictitious name permits, and provides for the deposit of these fees into the State Treasury, to be credited to the Contingent Fund of the Medical Board of California, a continuously appropriated fund.

This bill would provide that the duplicate permit fee shall not exceed the cost of processing, up to a maximum of \$50.

By increasing the source of money to a continuously appropriated fund, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2076 of the Business and  
2 Professions Code is repealed.

3 SEC. 2. Section 2076.5 of the Business and Professions  
4 Code is amended to read:

5 2076.5. (a) Notwithstanding any other provision of  
6 law, a physician and surgeon lawfully practicing medicine  
7 in another state or country may be exempted from  
8 licensure while practicing medicine in this state under  
9 the following conditions:

10 (1) The physician and surgeon has been invited by the  
11 United States Olympic Committee to provide medical  
12 services at training sites designated by the olympic  
13 training center or to provide medical services at an event  
14 in this state sanctioned by the committee.

15 (2) The United States Olympic Committee certifies to  
16 the board the name of the physician and surgeon, the  
17 state or country of the applicant's licensure, and the dates

1 within which the applicant has been invited to provide  
2 medical services.

3 (3) The physician and surgeon's practice is limited to  
4 that required by the United States Olympic Committee.  
5 Those medical services shall be within the area of the  
6 physician's and surgeon's competence and shall only be  
7 provided to athletes or team personnel registered to train  
8 at the olympic training center or registered to compete  
9 in an event conducted under the sanction of the United  
10 States Olympic Committee.

11 (b) The exemption provided in this section shall  
12 remain in force while the holder is providing medical  
13 services at the invitation of the United States Olympic  
14 Committee and only during the time certified to the  
15 board, but in no event longer than 90 days.

16 (c) Notwithstanding any other provision of law, the  
17 official team manager who is responsible for any team  
18 member participating in events at the invitation of the  
19 United States Olympic Committee in California may give  
20 consent to the furnishing of hospital, medical, and  
21 surgical care to a minor who is a team member and that  
22 consent shall not be subject to disaffirmance because of  
23 minority. The consent of the parent, or parents, of that  
24 person shall not be necessary in order to authorize  
25 hospital, medical, and surgical care.

26 SEC. 3. Section 2111 of the Business and Professions  
27 Code is amended to read:

28 2111. (a) Physicians who are not citizens but who  
29 meet the requirements of subdivision (b), are legally  
30 admitted to the United States, and who seek postgraduate  
31 study in an approved medical school may, after receipt of  
32 an appointment from the dean of the medical school and  
33 application to and approval by the Division of Licensing,  
34 be permitted to participate in the professional activities  
35 of the department in the medical school to which they are  
36 appointed. The physician shall be under the direction of  
37 the head of the department to which he or she is  
38 appointed, and shall be known for these purposes as a  
39 "Section 2111 guest physician."



(b) (1) Application for approval shall be made on a form prescribed by the division. The application shall show that the person does not immediately qualify for a physician and surgeon certificate under this chapter and that the person has completed at least three years of postgraduate basic residency requirements.

(2) Approval shall be granted for a maximum of three years and shall be renewed annually. Renewal shall be granted subject to the discretion of the division. Notwithstanding the limitations in this subdivision on the length of the approval, a Section 2111 guest physician may apply for, and the division may in its discretion grant, not more than two extensions of that approval. An extension may be granted only if the dean of the medical school has provided justification that the extension is necessary and the person holds a certificate issued by the Educational Commission for Foreign Medical Graduates.

(c) Except to the extent authorized by this section, the visiting physician may not engage in the practice of medicine, bill for his or her medical services, or otherwise receive compensation therefor. The time spent under appointment in a medical school pursuant to this section may not be used to meet the requirements for licensure under Section 2101 or 2102.

(d) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country from participating in any program established pursuant to this section.

SEC. 4. Section 2135 of the Business and Professions Code is amended to read:

2135. The Division of Licensing shall issue a physician and surgeon's certificate to an applicant who meets all of the following requirements:

(a) The applicant holds an unlimited license as a physician and surgeon in another state or states, or in a Canadian province or Canadian provinces, which was issued upon:

1 (1) Successful completion of a resident course of  
2 professional instruction equivalent to that specified in  
3 Section 2089.

4 (2) Taking and passing a written examination that is  
5 recognized by the division to be equivalent in content to  
6 that administered in California.

7 (b) The applicant has held an unrestricted license to  
8 practice medicine, in a state or states, in a Canadian  
9 province or Canadian provinces, or as a member of the  
10 active military, United States Public Health Services, or  
11 other federal program, for a period of at least four years.  
12 Any time spent by the applicant in an approved  
13 postgraduate training program or clinical fellowship  
14 acceptable to the division shall not be included in the  
15 calculation of this four-year period.

16 (c) The division determines that no disciplinary action  
17 has been taken against the applicant by any medical  
18 licensing authority and that the applicant has not been  
19 the subject of adverse judgments or settlements resulting  
20 from the practice of medicine which the division  
21 determines constitutes evidence of a pattern of  
22 negligence or incompetence.

23 (d) The applicant takes and passes the clinical  
24 competency written examination administered by the  
25 division or takes and passes in another state,  
26 commonwealth, or territory of the United States, an  
27 examination which is recognized by the division to be  
28 equivalent to that administered in this state. However,  
29 this subdivision shall not apply to a graduate of a medical  
30 school approved by the division.

31 (e) The applicant takes and passes an oral examination  
32 administered by the division.

33 (f) The applicant has not committed any acts or crimes  
34 constituting grounds for denial of a certificate under  
35 Division 1.5 (commencing with Section 475) or Article 12  
36 (commencing with Section 2220).

37 (g) Any application received from an applicant who  
38 has held an unrestricted license to practice medicine, in  
39 a state or states, or Canadian province or Canadian  
40 provinces, or as a member of the active military, United

1 States Public Health Services, or other federal program  
2 for four or more years shall be reviewed and processed  
3 pursuant to this section. Any time spent by the applicant  
4 in an approved postgraduate training program or clinical  
5 fellowship acceptable to the division shall not be included  
6 in the calculation of this four-year period. This subdivision  
7 does not apply to applications which may be reviewed  
8 and processed pursuant to Section 2151.

9 SEC. 5. Section 2185 of the Business and Professions  
10 Code is amended to read:

11 2185. Notwithstanding Section 135, an applicant for  
12 examination who fails to pass the oral examination or any  
13 part or parts of the written examination after two  
14 attempts shall not be eligible to be reexamined in the oral  
15 examination or in that part or parts of the written  
16 examination until the applicant presents evidence  
17 satisfactory to the division that he or she has completed  
18 additional appropriate medical instruction satisfactory to  
19 the division in a program conducted under the auspices  
20 of a medical school or an approved postgraduate training  
21 program. A failure of any part of the written examination  
22 administered in another state shall be considered a failure  
23 of that part for purposes of this section, if the division finds  
24 that the written examination administered in the other  
25 state is the same examination as that administered by the  
26 division under this chapter.

27 SEC. 6. Section 2290.5 of the Business and Professions  
28 Code is amended to read:

29 2290.5. (a) For the purposes of this section,  
30 “telemedicine” means the practice of health care  
31 delivery, diagnosis, consultation, treatment, transfer of  
32 medical data, and education using interactive audio,  
33 video, or data communications.

34 (b) For the purposes of this section, “health care  
35 practitioner” has the same meaning as “licentiate” as  
36 defined in paragraph (2) of subdivision (a) of Section 805.

37 (c) Prior to the delivery of health care via  
38 telemedicine, the health care practitioner who has  
39 ultimate authority over the care or primary diagnosis of  
40 the patient shall obtain verbal and written informed

1 consent from the patient. The informed consent  
2 procedure shall ensure that at least all of the following  
3 information is given to the patient verbally and in  
4 writing:

5 (1) The individual retains the option to withhold or  
6 withdraw consent at any time without affecting the right  
7 to future care or treatment nor risking the loss or  
8 withdrawal of any program benefits to which the  
9 individual would otherwise be entitled.

10 (2) A description of the potential risks, consequences,  
11 and benefits of telemedicine.

12 (3) All existing confidentiality protections apply.

13 (4) Patient access to all medical information  
14 transmitted during a telemedicine consultation is  
15 guaranteed, and copies of this information are available  
16 for a reasonable fee.

17 (5) Dissemination of any patient identifiable images or  
18 information from the telemedicine interaction to  
19 researchers or other entities shall not occur without the  
20 consent of the patient.

21 (d) A patient shall sign a written statement prior to the  
22 delivery of health care via telemedicine, indicating that  
23 the patient understands the written information  
24 provided pursuant to subdivision (a), and that this  
25 information has been discussed with the health care  
26 practitioner, or his or her designee.

27 (e) The written consent statement signed by the  
28 patient shall become part of the patient's medical record.

29 (f) The failure of a health care practitioner to comply  
30 with this section shall constitute unprofessional conduct.  
31 Section 2314 shall not apply to this section.

32 (g) Where the patient is a minor, or is incapacitated or  
33 mentally incompetent such that he or she is unable to give  
34 informed consent, this section shall apply to the patient's  
35 representative.

36 (h) Except as provided in paragraph (3) of subdivision  
37 (c), this section shall not apply when the patient is not  
38 directly involved in the telemedicine interaction, for  
39 example when one health care practitioner consults with  
40 another health care practitioner.



(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

*SEC. 6.5. Section 2290.5 of the Business and Professions Code is amended to read:*

2290.5. (a) For the purposes of this section, “telemedicine” means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. *Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes “telemedicine” for purposes of this section.*

(b) For the purposes of this section, “health care practitioner” has the same meaning as “licentiate” as defined in paragraph (2) of subdivision (a) of Section 805.

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient *or the patient’s legal representative*. The informed consent procedure shall ensure that at least all of the following information is given to the patient *or the patient’s legal representative* verbally and in writing:

(1) The ~~individual~~ *patient or the patient’s legal representative* retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the ~~individual~~ *patient or the patient’s legal representative* would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) ~~Patient~~ *All existing laws regarding patient access to all medical information transmitted during a telemedicine consultation is guaranteed, and copies of this information are available for a reasonable fee and copies of medical records apply.*

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient *or the patient's legal representative* shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient *or the patient's legal representative* understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient *or the patient's legal representative* shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) ~~Where the patient is a minor, or is incapacitated or mentally incompetent such that he or she is unable to give informed consent, this section shall apply to the patient's representative~~ *All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.*

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

1 (i) This section shall not apply in an emergency  
2 situation in which a patient is unable to give informed  
3 consent and the representative of that patient is not  
4 available *in a timely manner*.

5 (j) This section shall not apply to a patient under the  
6 jurisdiction of the Department of Corrections *or any*  
7 *other correctional facility*.

8 (k) *This section shall not be construed to alter the*  
9 *scope of practice of any health care provider or authorize*  
10 *the delivery of health care services in a setting, or in a*  
11 *manner, not otherwise authorized by law.*

12 SEC. 7. Section 2443 of the Business and Professions  
13 Code is amended to read:

14 2443. The following fees apply to fictitious-name  
15 permits issued under Section 2415:

16 (a) The initial permit fee shall be fifty dollars (\$50). If  
17 the permit will expire less than one year after its issuance,  
18 then the initial permit fee is an amount equal to 50  
19 percent of the fee in effect at the beginning of the current  
20 renewal cycle.

21 (b) The biennial renewal fee shall be forty dollars  
22 (\$40).

23 (c) The delinquency fee is twenty dollars (\$20).

24 (d) The duplicate permit fee shall not exceed the cost  
25 of processing up to a maximum of fifty dollars (\$50).

26 SEC. 8. *Section 6.5 of this bill incorporates*  
27 *amendments to Section 2290.5 of the Business and*  
28 *Professions Code proposed by both this bill and SB 922. It*  
29 *shall only become operative if (1) both bills are enacted*  
30 *and become effective on January 1, 1998, (2) each bill*  
31 *amends Section 2290.5 of the Business and Professions*  
32 *Code, and (3) this bill is enacted after SB 922, in which*  
33 *case Section 6 of this bill shall not become operative.*